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Supreme Court, U.S.
FILED
JAN 19 1994
OFFICE OF THE CLERK

No. 93-1104

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1993

NORDELL INTERNATIONAL RESOURCES LTD.,

*Petitioner,*

*v.*

TRITON INDONESIA INC., TRITON ENERGY CORPORATION, AND TRITON OIL (NZ) LIMITED,

*Respondents.*

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit**

## RESPONDENTS' BRIEF IN OPPOSITION

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## RESTATED QUESTIONS PRESENTED

The questions presented in the Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit should be restated as follows:

1. In the context of a commercial arbitration, does this Court have special and important reasons to make findings of fact of "fraud" and "corruption," which are contrary to findings of fact made by an American Arbitration Association Arbitration Panel and the United States District Court for the Central District of California, and which findings of fact were unanimously affirmed by a panel of the United States Court of Appeals for the Ninth Circuit, on factual matters which were thoroughly and completely submitted to the Arbitration Panel, properly confirmed by the District Court, and unanimously affirmed by the Ninth Circuit, where the findings of fact by the Arbitration Panel are clearly within the scope of a commercial arbitration clause and the relief requested by Petitioner?

2. In the context of a commercial arbitration, does this Court have special and important reasons to make findings of fact of "unclean hands," which are contrary to findings of fact made by an American Arbitration Association Arbitration Panel and the United States District Court for the Central District of California, and which findings of fact were unanimously affirmed by a panel of the United States Court of Appeals for the Ninth Circuit, on factual matters which were thoroughly and completely submitted to the Arbitration Panel, properly confirmed by the District Court, and unanimously affirmed by the Ninth Circuit, in order to create a possibility that such new findings of fact by this Court would justify the application of the "unclean hands doctrine," justify the creation of the "unclean hands doctrine" as an explicit, well-defined and dominant federal public policy by which to review commercial arbitration proceedings, and justify a finding that the Arbitration Award, confirmed by the decisions below, violated this newly created public policy?

## PARTIES AND RULE 29.1 STATEMENT

Respondents concur with the Rule 29.1 Statement of Petitioner except in the following respects:

Triton Energy Corporation has issued shares to the public. Triton Indonesia is a wholly-owned subsidiary of Triton Energy Corporation.

Triton Oil (N.Z.) Limited is a wholly-owned subsidiary of New Zealand Petroleum Company Limited, a company which has issued shares to the public. The Arbitration Panel determined that Triton Oil (N.Z.) Limited was "not an independent participant in the Enim Project, and therefore cannot be considered as a separate party in this case." It has therefore not been considered as a separate party in this case by either Petitioner or Respondents in their arguments, motions and briefing.

Further, Triton Energy Corporation identifies the following additional parent companies, subsidiaries or affiliates that have issued shares to the public:

Crusader Limited
Triton Europe, plc
Triton Canada Resources Ltd.
Australian Hydrocarbons N.L.
Aero Services International, Inc.
Allied Queensland Coalfields Ltd.

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**The Respondents, Triton Indonesia Inc. and Triton Energy Corporation (collectively referenced as "Triton"), respectfully request that this Court deny the petition for writ of certiorari, seeking review of the Ninth Circuit's Memorandum Opinion in this case. That opinion, and subsequent decisions, are attached as part of the Appendix to the petition for writ of certiorari.**

## OPINIONS BELOW

The Opinion of the Ninth Circuit is properly reprinted at Nordell Appendix A, APP-1-23.[1] The Final Judgment Confirming Arbitration Award of the United States District Court for the Central District of California, (E. Rafeedie, District Judge) is properly reprinted at Nordell Appendix B, APP-24-25. The Arbitration Award is properly reprinted at Nordell Appendix B, APP-25-33.

## OBJECTION TO JURISDICTIONAL STATEMENT

Pursuant to Supreme Court Rule 15.4, Triton objects to the jurisdiction of the Court to grant a writ of certiorari based on the arguments set forth by Nordell Resources Ltd. ("Nordell"), which jurisdiction, Nordell contends, is based on 28 U.S.C. § 1254(1) and 9 U.S.C. §§ 16(a)(1)(D)-(E), 16(a)(3).

### A. The decision below does not decide a federal question in a way that conflicts with applicable decisions of this Court.

Nordell argues that the Ninth Circuit's Memorandum Opinion "ignores" this Court's prior decisions of *United Paperworkers International Union, AFL-CIO, v. Misco, Inc.*, 484 U.S. 29, 108 S.Ct. 364, 98 L.Ed.2d 286 (1987) and *W.R. Grace and Co. v. Local Union*, 759, 461 U.S. 767, 103 S.Ct. 2177, 76 L.Ed.2d 298 (1983). Nordell's Petition for Writ of Certiorari,[2] p. 14. Supreme Court Rule 10 sets forth the character of reasons to be considered for the exercise of this Court's discretion to grant a

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[1] References to documents included in the Appendix to Nordell's Petition will be referenced as the "Nordell Appendix." References to documents in the Appendix to this Brief will be referenced as the "Appendix." Specific page references to both will be cited as "APP-___."

[2] Hereafter, Nordell's Petition for Writ of Certiorari will be referenced as the "Petition."

petition for writ of certiorari. Nordell apparently argues that this Court should exercise its jurisdiction because the Ninth Circuit's opinion allegedly decides "a federal question in a way that conflicts with applicable decisions of this Court." Supreme Court Rule 10(c). This factor is not remotely present here. As Nordell concedes, in *Misco* and *W.R. Grace*, this Court *refused* to overturn arbitration awards on grounds that they violated public policy. Petition, pp. 15-16. Similarly, t' : Ninth Circuit below refused to overturn the award at issue here. (Nordell Appendix A, APP-8-11.) Thus, the Court's decisions in *Misco* and *W.R. Grace* support, rather than conflict with, the Ninth Circuit's decision below. The Petition should be denied on this basis alone.

**B. 9 U.S.C. § 16 does not confer independent jurisdiction for this Court to review the decision below.**

Title 9, Section 16 of the United States Code is not an independent ground to be used by this Court to exercise jurisdiction. This provision was recently enacted to provide certain limited rights of appeal for parties involved in arbitrations (for example, where a trial court rejects a party's contention that a dispute is arbitrable). The rights of appeal provided by Section 16 refer to rights to appeal certain orders impacting arbitration or arbitration awards, themselves, to the federal courts of appeal, not to this Court. *See, e.g., Campbell v. Dominick & Dominick, Inc.*, 872 F.2d 358, 361 (11th Cir. 1989); *Turboff v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 867 F.2d 1518 (5th Cir. 1989).

## REVISIONS, CORRECTIONS AND ADDITIONS TO PETITIONER'S STATEMENT OF THE CASE

Petitioner, Nordell, lost a commercial arbitration which Nordell commenced in January 1990. The Arbitration Proceedings included three weeks of testimony on hotly contested factual

issues in Singapore in October 1990. Nordell was allowed to present evidence, arguments, and authorities to the Arbitration Panel. After it lost the Arbitration Proceedings, Nordell moved to vacate the Arbitration Award in the United States District Court for the Central District of California. Nordell lost again. Nordell appealed to the Ninth Circuit. By a unanimous decision, it lost again.

Nordell presents many challenges to facts found by the Arbitration Panel and by the District Court, all of which were unanimously affirmed by the Ninth Circuit. There is no reason for this Court to grant the Petition to review fact findings which were correct when made, confirmed, and affirmed, in a commercial arbitration involving an Indonesian oil concession.

**A. Summary Overview**

In October 1988, Respondent, Triton Indonesia Inc. ("TII"), entered a commercial contract with Petitioner, Nordell, which involved oil and gas operations in Indonesia and which required arbitration of any disputes in Singapore. Respondent, Triton Energy Corporation ("Triton Energy"), executed a written limited guaranty agreement as part of the commercial transaction. Veronex Resources Ltd. ("Veronex"), the parent of Nordell, was also involved in the transaction. The arbitration clause in the contract was broad and unrestricted. (Appendix 1; Nordell Appendix A, APP-12-13.) The arbitration clause invoked the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). *Id.*

In January 1990, Nordell "c/o Veronex Resources Ltd." demanded arbitration against both TII and Triton Energy. A distinguished three-member panel of arbitrators was selected by the parties and by the Los Angeles office of the AAA (the "Arbitration Panel" or "Panel"). The Panel held several prehearing conferences and entered an interim order prior to commencement of the Arbitration Proceedings.

The Arbitration Panel heard three weeks of testimony in October 1990 in Singapore. The Panel heard closing arguments in Los Angeles in November 1990. The Panel issued its arbitration award (the "Arbitration Award" or "Award") on December 13, 1990.

Nordell requested a "divorce" -- equitable relief -- as well as damages and punitive damages from Triton. (Appendix 4, APP-8-9.) Nordell was allowed to present all of its evidence to the Arbitration Panel, including evidence which Nordell contended supported its claims of fraud, corruption, and unclean hands, against Triton. (Appendices 4 and 5, APP-8-14.) The Panel granted Nordell a "divorce". The Panel granted damages to Triton and realigned the parties' interests in the ENIM Project. The District Court confirmed the Arbitration Award. The Ninth Circuit unanimously affirmed the District Court's Final Judgment as it related to Nordell. TII and Triton Energy are proceeding with the remanded issues involving Veronex before Judge Rafeedie at this time.

**B. Revisions, Corrections and Additions to Petitioner's Factual Overview**

Throughout its Petition, Nordell misstates and mischaracterizes the proceedings below concerning: (i) the issue of fraud and the manner in which Nordell presented the issue of fraud during the Arbitration Proceedings; (ii) the *complete absence* of findings by the Panel that Triton committed fraud, that Triton in any way violated the Foreign Corrupt Practices Act ("FCPA"), that Triton violated any public policy, or that Triton had "unclean hands;" (iii) the substantial evidence on which the Panel properly relied in issuing the Arbitration Award; and (iv) the testimony of the arbitration witnesses supporting the Arbitration Award.

**1. Nordell's loosely asserted "fraud" claim.**

During the middle of the Arbitration Proceedings, Nordell asserted a claim against Triton based on purported fraudulent

accounting practices by Triton in the ENIM Project. Nordell used its fraud claim very loosely, much in the fashion it loosely asserts "fraud" throughout its Petition. Nordell presented evidence that it alleged supported its fraud claim to the Arbitration Panel. Because the fraud claims were so vague, Mr. Armour, the head of the Arbitration Panel, instructed Nordell to clarify its claims of fraud. Instead of amending its claims, Nordell stated that it withdrew the fraud issue, contending that "the same evidence [presented by Nordell] that goes to fraud goes to the issues of breaches of contract, breach of fiduciary duty. The same evidence is a basis for the remedy that we're going to ask for . . . " (Appendix 13, APP-59-60.)

Nordell, although it claimed to withdraw its fraud claim, continued to argue fraud throughout the Arbitration Proceedings. (ER 141,[3] Exh. R, Tr. 327-28, 475, 790, 1065, 1143, 1183, 1281). Nordell even supplied to the Arbitration Panel a brief on the elements of fraud. (Appendix 11, APP-43.) The Arbitration Panel unanimously rejected each of Nordell's arguments.

**2. The Arbitration Panel implicitly found that Triton did not commit fraud.**

As the Arbitration Award reflects, the Arbitration Panel found in favor of Triton and against Nordell on every issue submitted for decision. (Nordell Appendix B, APP-24-33.) The Arbitration Panel did *not* find that Triton committed fraud -- whether common law fraud, securities fraud, or any other type of fraud. *Id.* The Arbitration Panel did *not* find that Triton committed a violation of the FCPA. *Id.* The Arbitration Panel did not find that Triton violated public policy of any kind, nor did it find that Triton was guilty of "unclean hands." *Id.* As the Ninth

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[3] *Citations to Record below not included in Appendix*: "CR" refers to items on the District Court's Docket Sheet which were not included in the Excerpts of Record filed with the Ninth Circuit. "ER" refers to items included in the Excerpts of Record and corresponds to item numbers on the District Courts' Docket Sheet.

Circuit correctly found: "The reliability of Triton's data was a hotly contested factual issue during the proceedings. By relying on the data in the face of allegation of fraud, the Arbitration Panel implicitly made a factual finding that the data were reliable." (Nordell Appendix A, APP-9.) Moreover, Nordell -- at no time -- argued to the District Court below or to the Ninth Circuit that alleged securities fraud or alleged violations of the FCPA by Triton were grounds to vacate the Award.

**3. The basis of the arbitration award.**

The Arbitration Award is completely supported by competent testimony and evidence admitted and reviewed by the Arbitration Panel below. This was more fully described by Triton in correspondence dated July 29, 1991 to the Arbitration Panel. (Appendix 7.)

The Arbitration Award is supported by calculations from (i) cash-based exhibits prepared by Michael Calloway [4] -- Triton's Arbitration Exhibits VVV and ZZZ (Appendix 3; ER 141, Exh. E), (ii) the KPMG Report of October 11, 1990 -- Nordell's Arbitration Exhibit 54 (Appendix 2; ER 141, Exh. F), and (iii) calculations by Nordell itself -- Nordell's Arbitration Exhibit 33 (ER 141, Exh. G). Mr. Calloway took the cash basis required by Nordell, reviewed the source documents concerning the cash receipts and cash payments, and constructed Triton's Arbitration Exhibit VVV. He included Triton's administrative

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[4] Calloway was an internal auditor for Triton. The so-called "Calloway Report," about which Nordell makes such ado, was an internal memorandum prepared by Calloway after being employed by Triton for only approximately three months. It contains no admissions of fraud, corruption, or unclean hands, as claimed by Nordell. As the following evidence will show, the matters contained in the Calloway memorandum had no effect on the documents and calculations which ultimately supported the Arbitration Award. For example, Calloway's calculations for presentation at the Arbitration Proceedings were prepared long after the Calloway memorandum was prepared. Indeed, the Calloway memorandum -- mischaracterized by Nordell as a "Report" -- is Nordell's ultimate red herring.

charges conservatively at one times actual salary, which was 1/3 of what Triton normally charged (it was also 1/3 of what was customary in the industry). He included the payments for rigs based on evidence showing when cash payments were made -- cash, not so-called inflated purchase orders. His calculations did *not* include the alleged "bribes", which were never proven by Nordell.

The result of these admitted documents and testimony lead to the following calculation supporting the Arbitration Award:

| | |
|---|---|
| KPMG October 11, 1990 Report -- Nordell's Exhibit 54 -- showing Nordell deficit as of September 30, 1990 . . . . . | $663,402.00 |
| Overpayment to Nordell due to recalculation on cash basis by Calloway in Triton's Exhibits VVV and ZZZ . . . . . | 329,053.00 |
| Less Excess Joint Interest Billing for 25 days of November 1989 per Nordell's Exhibit 33 (25/30ths of $580,323.00) . . . . . | (483,741.00) |
| | 508,714.00 |

This is precisely the amount of adjustments in favor of Triton contained in the Arbitration Award. (Nordell Appendix B, APP-26-28.) There is no evidence before this Court -- and Nordell can point to none -- that alleged improper payments to Pertamina or inflated invoice amounts affected the calculations made by Calloway or KPMG.

**4. The testimony supporting an award against Nordell and in favor of Triton.**

In its Petition, Nordell relies on misleading and materially incomplete portions of the arbitration testimony of

Messrs. Calloway, McDonough, Murphy, Poulton and Maupin to urge this Court to review the Arbitration Panel's implicit *fact finding* against Nordell on the so-called fraud issue, which was confirmed by the District Court and affirmed by the Ninth Circuit. All of the testimony Nordell urges in its Petition was heard and considered by the Arbitration Panel. In fact, each of the issues now raised by Nordell was hotly contested by Nordell and Triton. After considering such testimony, the Arbitration Panel found against Nordell.

Further, should this Court undertake a review of the factual testimony offered by Nordell, the entire context of the testimony of these witnesses reveals sufficient support in the record for the factual findings made by the Arbitration Panel. (Nordell Appendix A, APP-10.)[5]

The testimony of Calloway, McDonough, McAdoo, Poulton, Murphy, Maupin and Holdoway, when taken as a whole, clearly support the decision below.

*Calloway Testimony*

Nordell admitted in discussions with the Arbitration Panel off the record that the matters discussed in the Calloway memorandum and testimony did not harm Nordell. Moreover, the matters had no effect on Calloway's calculations on Triton's Arbitration Exhibit VVV -- which ultimately supported the Arbitration Award by the Arbitration Panel. (CR 68, Keever Declaration 9/12/91, ¶ 11.) Mr. Calloway explained the impact of

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[5] In its Petition, Nordell continually confuses two distinct accounting concepts for the ENIM Project: net project investment and cost recoverable amounts. "Net project investment" involved Triton's relationship with Nordell, and Veronex. "Cost recoverable amounts" involved accounting procedures with Pertamina, the state oil agency of Indonesia. The formula for determining net project investment by Triton ($21 million invested) was different from the annual calculation of matters that could go into the cost pool for ultimate cost recovery from Pertamina. Pertamina purchased the oil produced from the ENIM Project.

Nordell's Arbitration Exhibit 90, the so-called "Calloway Report":

> "To my understanding, it did not affect either one on the carry, or on the project investment [the $21 million Triton obligation which was satisfied on November 25, 1989 according to the Arbitration Award]."[6]

(Nordell Appendix G, APP-66.) Did Mr. Calloway or anyone working with him have the intent of fooling around with the project records?

> "Absolutely not."

Did Mr. Calloway or anyone working with him alter or modify the books and records of the project?

> "We did not."

(Appendix 8, APP-24.) Calloway's testimony also indicates that he detected nothing of significance that affected Triton's relationship with Nordell. If Nordell's allegations that Triton paid Pertamina auditors were true -- and there was *no* testimony by a person with first-hand knowledge that this happened -- the payments were no more than facilitating payments to establish that certain items were cost recoverable and to be paid by Pertamina. (Nordell Appendix G, APP-58.) These determinations would benefit Nordell, not harm it. Calloway described the payments, if any, in his testimony as "facilitating payments." *Id.* He also testified that:

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[6] Nordell's alleged motives for Triton's conduct defy logic. If Triton were so bent on defrauding Nordell, why would Triton have sent Calloway *back* to Indonesia to audit the records and to prepare reports for the Arbitration Proceedings? If Triton were truly intent on pursuing corrupt practices, Calloway would be the *last* person, not the first, whom Triton would send back to the ENIM Project.

> "There was an attempt to make things cost recoverable, in a foreign environment where that was necessary sometimes."

(Appendix G, APP-60.) As explained in footnote 5, "cost recoverable" deals with the cost pool for purposes of Pertamina payments, and is not a part of the net project investment equation relating to Triton's $21 million relationship with Nordell under the Farmout Agreement.

*McDonough Testimony*

Jim McDonough was a Triton Energy employee. He assisted in the purchase of three drilling rigs in the United States for the ENIM Project. He testified that he was instructed by Mr. Rich McAdoo, a TII employee -- who was employed by Nordell during the Arbitration Proceedings -- on procedures involving purchase orders for three drilling rigs. The rigs were bought at an auction in the United States in July 1989. McDonough testified "he had no idea" whether the purchase orders were even used by Triton management for any purpose. (ER 141, Exh. R, Tr. 1610.) He further testified that he did not know if the joint interest account (in which Nordell participated) was charged for the rigs. (Appendix 9, APP-30.) Nordell never introduced any evidence, nor did its auditors find, that any improper purchase order was used by Triton for anything, much less in its accounting of the ENIM joint interest account.

*McAdoo Testimony*

Rich McAdoo was the general manager of the TII office in Jakarta until December 1989. Just before the Arbitration Proceedings, he left TII and became an employee of Nordell, or its parent, Veronex (the record was unclear). The alleged rig overstatements about which Nordell argues occurred, if at all, while McAdoo was in charge of the TII Jakarta office. McAdoo was under Nordell's control during the Arbitration Proceedings.

McAdoo denied any wrongdoing in his testimony before the Arbitration Panel. (Appendix 10, APP-35-38.) McAdoo denied that rig purchase orders were used to charge the net project investment account to the detriment of Nordell. In fact, McAdoo stated that McDonough had saved the ENIM Project, and therefore, Nordell, $3 million. *Id.*

*Poulton Testimony*

Rick Poulton was a TII employee for several months in Jakarta. He was hired by TII to review certain ENIM Project accounts. He was not employed by TII or Triton Energy by the time the Arbitration Proceedings commenced in October 1990. He did not complete his work before he left TII. He was called as a witness by Nordell.

Poulton testified that he attempted to establish an "inventory-in-transit" account while conducting his work at Triton. His failure to complete this task required Triton to engage KPMG, the international accounting firm, to complete the job in early 1990. Moreover, Poulton actually confirmed that Triton was *not* conducting illegal or fraudulent accounting practices:

Flegle: "And you also said that Mr Jones refused to implement the [allegedly unlawful] procedures. Right?

Poulton: That's correct.

Flegle: And so, to your knowledge, the procedure was never implemented. Is that correct?

Poulton: Yes, to my knowledge, it was not implemented. To my knowledge, Mr Jones refused to cooperate with it and at that point it was abandoned.

Flegle: *So, you're not here today to tell the panel that documents that were sent to Nordell were based on an illegal procedure, are you?*

Poulton: *No."*

(ER 141, Exh.R, Tr. 735-736.) (emphasis supplied). While Nordell paints the picture that the "inventory-in-transit" account created by Poulton somehow reflected inventory never received by Triton, Poulton testified that the amounts in the account could have reflected legitimate materials that were received. (Appendix 11, APP-40-41.) Poulton further did not have any personal knowledge of any payments that could be construed as violations of the Foreign Corrupt Practices Act. (Appendix 11, APP-42.) He could not even testify concerning how his purported "inventory-in-transit account" might affect the damage issues to be decided by the Arbitration Panel. (Appendix 11, APP-40.) Finally, any alleged "findings" of Poulton were premature in light of the fact that he never completed his work. (Appendix 11, APP-41.)

*Murphy Testimony*

Pat Murphy, a Triton employee, was asked about fraudulent accounting practices, or the possibility of fraudulent accounting practices. His response?

> "I think Bill [McClure] was confused. Bill . . . makes rash statements in [Nordell's] Exhibit "7." The way I recall this conversation . . . this is taken out of context . . . there was additional conversation. My conclusion was Bill was confused."

(ER 141, Exh. R, Tr. 2103-04).

*Maupin Testimony*

Paul Maupin was Nordell's *own auditor.* He was hired by Nordell's parent, Veronex. He conducted a "defalcation" audit of ENIM Project records in early 1990. This audit was after Nordell demanded arbitration. Maupin could find no evidence of

fraud by Triton. (ER 141, Exh. R, Tr. 980, 1017-18).[7] Maupin failed to properly request information which he later alleged was crucial, failed to notify Triton of any problems concerning access to the information, and failed to discuss his findings with Triton upon his departure or anytime thereafter, as he was required to do. (ER 141, Exh. R, Tr. 974, 997) (Appendix 13, APP-57-58.) After Maupin departed, Triton received no information from him concerning his so-called audit exceptions. *Id.*

*Holdoway Testimony*

Graham Holdoway was an accountant employed by KPMG Hanadi Sudjendro & Rekan (KPMG) in Jakarta. KPMG was hired by TII to advise regarding the internal recordkeeping of the ENIM Project. KPMG's help was needed because Nordell admittedly left the ENIM Project records in complete disarray in 1988. TII, as operator, had to organize the mess. Mr. Holdoway testified at Nordell's request during Nordell's case-in-chief. (Appendix 12.) After KPMG performed its work, and as part of its work, KPMG issued its report of October 11, 1990. In the report, KPMG found that Nordell had a deficit, or cash obligation owed to Triton, in the amount of $663,402.00. (Appendix 12, APP-47-48.) This was one of the numbers used by the Arbitration Panel in calculating the Arbitration Award. Among other things, Holdoway testified that, in his review of the accounting records, he found no evidence of fraud committed against Nordell. (Appendix 12, APP-46-48-49.)

### C. Revisions, Corrections and Additions to Petitioner's Procedural Discussions

Throughout the Petition, Nordell makes erroneous observations about the procedural development of the Arbitration

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[7] Nordell's statement that "Calloway never even ordered a fraud audit," therefore, is irrelevant since Nordell itself conducted a fraud audit. Petition, p. 21. Nordell could find no evidence of fraud by Triton.

Proceedings and other matters unrelated to this Court's decision regarding certiorari. Triton will briefly discuss these matters here.

**1. The Arbitration Panel's request for further information.**

Nordell mischaracterizes the Arbitration Panel's supplemental request for information in November 1990. The request concerned a damage calculation prepared by Calloway. Nordell further misrepresents the nature of the circumstances surrounding the Panel's request. From the beginning to the end of the Arbitration Proceedings, the chief arbitrator, Mr. Armour, continually emphasized the Panel's desire to allow and consider any evidence any of the parties wished to submit. For example, during the proceedings, he stated:

> We intend to permit any testimony or evidence to come into this case from the time it started till the time it ends. And whether its oral or written, we've permitted it to come in and we think that we shouldn't vary from that procedure. There are a lot of accusations back and forth -- you didn't do it, you didn't do this, or you said this or you said that. But I think we want to hear everything and see everything that pertains to the issues here and its important. Now what weight we give to it, is another matter . . . We think it's important to hear what every party has to say.

(Appendix 13, APP-61.)

On November 15, 1990, the Arbitration Panel forwarded a letter to *both* Triton and Nordell requesting additional information relating to three exhibits presented in the Arbitration Proceedings concerning, primarily, certain damage calculations prepared by Calloway. (Nordell Appendix I, APP-98-99.) Nordell, on November 16, responded to the Arbitration Panel's letter with its own explanation and interpretation of the exhibits

referenced. In fact, Nordell referred the Arbitration Panel to its explanation of the exhibits "in significant detail" in its "Arbitration Brief Re: Testimony of Michael Calloway." (CR 14, Ex. I.) Despite the fact that Nordell had already responded to the Arbitration Panel's letter, Nordell sent a further letter requesting an opportunity to respond ("if it so desires") to any submissions Triton would make "concerning the exhibits or otherwise." *Id.*

On November 19, 1990, pursuant to the Arbitration Panel's request, Triton forwarded correspondence to the Arbitration Panel further explaining the referenced exhibits and the calculations contained therein. The letter contained attachments of Calloway's testimony during the Arbitration Proceedings relating to the exhibits and his written explanation thereto. (Nordell Appendix J, APP-100-114.) On November 20, 1990, the Arbitration Panel requested Nordell to respond *immediately,* if it so desired. (Appendix 6.) Triton never received a further response from Nordell. (ER 141, ¶41.) The record additionally does not reflect that the AAA ever received a further response from Nordell. *Id.*[8]

During this same time period Nordell submitted almost daily letters to the Arbitration Panel from November 16, 1990 through December 3, 1990, requesting "interim injunctive relief." (ER 141, ¶40-41, Exh. M1-7.) The letters contained wild and unsupported allegations concerning TII's employees in Indonesia and Triton's financial condition. These letters caused serious morale problems in the TII office in Jakarta.

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[8] Nordell contends it submitted a further response letter on November 30, 1990, ten days after the "immediate" request by the Arbitration Panel. Ms. Pelo, the AAA administrator, typically would acknowledge receipt of letters via confirmation correspondence to all parties. No such correspondence was ever sent to the parties confirming receipt of a November 30 letter from Nordell. In fact, Nordell did not send the November 30 letter. (ER 141, ¶41.)

As a result of this paper barrage sent by Nordell and the Arbitration Panel's finding that the allegations were untimely and without merit, the Arbitration Panel, on December 3, 1990, issued an order that it would not consider or rule on any "alleged factual information contained in these letters" and further ordered that no such future submissions occur. (Nordell Appendix L, APP-136-138.)

**2. The Arbitration Panel's factual finding that Nordell, not Triton, acted in bad faith.**

It is truly amazing that Nordell argues the purported application of the doctrine of unclean hands against Triton. The Arbitration Panel found that Nordell, not Triton, was guilty of bad faith and harassment in its acts committed against Triton. The Arbitration Panel awarded equitable relief in favor of Triton and against Nordell based on these factual findings and the requests of the parties for equitable relief. As the Arbitration Award clearly sets forth, the Arbitration Panel redistributed the parties' interests in favor of Triton "in view of both parties' request for an adjustment of interest of each in the [ENIM] Project and in view of *Nordell's demonstration of bad faith in not paying cash calls and incessant harassment of Triton's operations.*" (Nordell Appendix B, APP-28-29.) (emphasis supplied)

**3. Confidentiality.**

Nordell paints a completely misleading picture concerning purported issues of secrecy. The focus of Nordell's complaint is the sealing of the Calloway testimony as it related to the Calloway memorandum. What Nordell fails to tell this Court is that (i) the contract at issue contained a confidentiality agreement between Nordell and Triton (CR 68); (ii) confidentiality was extremely important to the parties' working relationship with Pertamina, the Indonesian national oil agency, as well as the safety and well-being of Indonesian nationals and ex-patriates

working on the ENIM Project (CR 68); (iii) Nordell *agreed* during the Arbitration Proceedings that the testimony regarding the Calloway memorandum and the document itself would be sealed and not copied (Appendix 13, APP-60-61.); (iv) Nordell assured the parties and the Arbitration Panel that the materials would not be used outside the Arbitration Proceedings (*Id.*); and (v) the Ninth Circuit entered an order of seal regarding one of the several appeals in this case. Thus, the sealing of the Calloway testimony was not any type of "cover-up" or conspiring act; rather, it was an order carried out by the Arbitration Panel pursuant to the terms of the contract and *Nordell's* agreement.[9]

**4. The unrelated Janacek Case.**

The *Janacek* litigation is not relevant to the Questions Presented by Petitioner. See Petition, p. i. The issues in *Janacek* involved state law wrongful termination claims by a former employee against Triton Energy in a Texas state court. (See Triton's Response in Opposition to Nordell's Request for Judicial Notice filed with the Ninth Circuit on December 7, 1992.) The accounting documents at issue were completely separate from any introduced in the Arbitration Proceedings. Additionally, no final judgment was entered on the jury findings in *Janacek.* Thus, no accounting fraud was "proven" in the case as alleged by Nordell. *Id.*

## REASONS WHY THE PETITION SHOULD BE DENIED

The Ninth Circuit decision is not in conflict with *W.R. Grace* and *Misco,* both of which affirmed arbitration awards. The matters raised by Petitioner are matters of fact which have been properly found, repeatedly, in favor of Triton. Moreover, there is no overriding question of such significance here that justifies the

[9] Before Nordell received the Arbitration Award, it did not find the need for confidentiality of the Arbitration Proceedings to be offensive.

exercise of this Court's discretion to grant a writ of certiorari. In fact, the matters at issue here are matters that affect only the parties involved and do not rise to the level of national or precedential significance.

**A. The *W.R. Grace* and *Misco* decisions are not in conflict with the decision below.**

As previously discussed, this Court's decisions in *W.R. Grace* and *Misco* do not conflict with the Ninth Circuit's decision below. *See* Supreme Court Rule 10.1(c). For this reason alone, this Court need go no further in the analysis of Nordell's Petition.

However, even if it is assumed that there is some conflict — which Triton vigorously denies — the policy concerns expressed in *W.R. Grace* and *Misco* are satisfied by the Ninth Circuit's decision below.[10]

This Court first outlined the public policy exception to enforcement of arbitration awards in *W.R. Grace & Co. v. Local*

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[10] It should be noted that *W.R. Grace* and *Misco* involved review by the district court of labor arbitration awards. The policy concerns inherent in reviewing labor awards are different from the concerns in reviewing commercial arbitration awards, as here. In fact, the proper policy articulated in the Ninth Circuit is that labor arbitration cases "are not relevant in the commercial arbitration context." *Todd Shipyards Corp. v. Cunard Line, Ltd.*, 943 F.2d 1056, 1062 (9th Cir. 1991); *see also Raytheon Co. v. Automated Business Sys., Inc.*, 882 F.2d 6, 10-11 (1st Cir. 1989) ("the concerns which may warrant such a rule in a labor arbitration field are not present in the commercial arbitration context"). Other federal courts have suggested that the public policy exception to enforcement of arbitration awards announced in *W.R. Grace* and *Misco* apply only to labor arbitration awards. *See, e.g., Service Employees Intern. v. City Cleaning Co.*, 982 F.2d 89, 91 (3rd Cir. 1992); *Chrysler Motors Corp. v. Internat'l Union*, 748 F. Supp. 1352, 1359 (E.D. Wis. 1990); *Maggio v. Local 1199*, 702 F. Supp. 989, 991 (E.D.N.Y. 1989), *aff'd*, 880 F.2d 1319 (2nd Cir. 1989), *cert. denied*, 493 U.S. 936, 110 S.Ct. 329, 107 L.Ed.2d 319 (1989). At any rate, these distinctions are not important for this Court's purpose. The decision below does not conflict with the Court's prior decisions.

*Union 759,* 461 U.S. 757, 103 S.Ct. 2177, 76 L.Ed.2d 298 (1983). In *W.R. Grace,* the Court reviewed a conflict concerning a collective bargaining agreement, which gave seniority to certain male employees, and a consent decree between the employer and the EEOC designed to settle a sex discrimination suit under Title VII. When the male employees lost their seniority because of implementation of the consent decree, they requested arbitration. An arbitrator held that, irrespective of the consent decree, the employer had breached the seniority provisions of the agreement and ruled in favor of the employees. 461 U.S. at 759-64.

In the course of confirming enforcement of the arbitration award, this Court discussed the public policy exception. Beginning with the proposition that, "[a]s with any contract . . . a court may not enforce a collective-bargaining agreement that is contrary to public policy," the Court ruled that questions of public policy were properly answered in the courts and that, if a court found that an arbitral award violated public policy, it would be "obliged to refrain from enforcing it." *Id.* at 766.

The Court then sought to define "public policy." For an asserted public policy to be sufficient to preclude enforcement of an arbitrator's award, it had to be "explicit;" furthermore, it had to be "well defined and dominant." *Id.* Finally, such a policy could be satisfactorily demonstrated only " 'by reference to the laws and legal precedents' " and could not be the product of the parties' or the courts' " 'general considerations of supposed public interests'." *Id.* (quoting *Muschany v. United States,* 324 U.S. 49, 66, 65 S.Ct. 442, 451, 89 L.Ed. 744 (1945)).

The Court clarified the narrow scope of the public policy exception in *United Paperworkers International Union, AFL-CIO v. Misco, Inc.,* 484 U.S. 29, 108 S.Ct. 364, 98 L.Ed.2d 286 (1987). In *Misco,* an employee was discharged after marijuana was found by police in his home and a lighted marijuana cigarette was seen in his car with marijuana smoke in the air. The

employee's job duties included operating hazardous machinery. The arbitrator ordered reinstatement "in his old job or an equivalent one for which he was qualified" with backpay, finding that the employer had failed to prove that the employee had actually possessed or used illegal substances while on company property and thus that he had violated any company rule. 484 U.S. at 34, 45.

The district court vacated the award. The Fifth Circuit affirmed the district court's decision vacating the award. The Fifth Circuit reasoned that reinstatement would violate the public policy "against the operation of dangerous machinery by persons under the influence of drugs or alcohol." *Misco, Inc. v. United Paperworkers Intern. Union, AFL-CIO,* 768 F.2d 739, 743 (5th Cir. 1985). This Court unanimously reversed. The Court held that the circuit court had failed to follow the dictates of *W.R. Grace* with respect to the articulation and application of a public policy necessitating the invalidation of the arbitrator's award.

The Court began by reaffirming the "explicit" and "well defined and dominant" requirements expressed in *W.R. Grace,* saying that the result in that case had "turned on [the Court's] examination of whether the award created any explicit conflict with other 'laws and legal precedents' rather than an assessment of 'general considerations of supposed public interests.' " 484 U.S. at 43 (quoting *W.R. Grace,* 461 U.S. at 766). "At the very least," Justice White continued for the Court, "an alleged public policy must be properly framed under the approach set out in *W.R. Grace,* and the violation of such a policy must be clearly shown if an award is not to be enforced." 484 U.S. at 43. The Court stated that, for the public policy exception to apply, the enforcement of the award must violate public policy.

The Court concluded that the Fifth Circuit's articulation of a general "public policy" against drug use by employees violated

the strict requirements of the *W.R. Grace* formulation; that no violation of the public policy it articulated had been "clearly shown" in any case; and that the Fifth Circuit had, in its public policy analysis, improperly drawn an inference at odds with the arbitrator's finding. 484 U.S. at 44-45. The Court stated:

> The parties did not bargain for the facts to be found by a court, but by an arbitrator chosen by them . . . Nor does the fact that it is inquiring into a possible violation of public policy excuse a court for doing the arbitrator's task.

*Id.* at 45. The Court noted that it was not the function of the reviewing court to upset an arbitration award merely because of the court's own view that a particular public policy was threatened. *Id.* The Court further made clear its decision did not announce an expansive interpretation of the public policy exception. The Court announced that: "[*W.R. Grace*] does not sanction a broad judicial power to set aside arbitration awards as against public policy." 484 U.S. at 43.

First, in this case, the Arbitration Panel did not find that Triton violated any public policy. As a result, Nordell's attempt to use the public-policy exception is wholly improper. *See Misco,* 484 U.S. at 44-45 (because the arbitrator made no findings of a public policy violation, the court of appeals had no authority to vacate the award on public policy grounds). *See also Union Pacific Railway Co. v. United Transportation Union,* 3 F.3d 255, 261, 264 (8th Cir. 1993) (reviewing courts are not allowed to make factual findings when setting aside arbitration awards on public policy grounds); *United States Postal Service v. National Association of Letter Carriers, AFL-CIO,* 839 F.2d 146, 148 (3rd Cir. 1988) (reviewing court cannot second-guess an arbitrator's fact finding where alleged violation "depends on drawing factual inferences not made by the arbitrator"). For example, to accept Nordell's argument, this Court would be required to make factual findings that Triton committed fraud or violated the

FCPA, when the Arbitration Panel made exactly contrary factual findings.

Second, even if the Arbitration Panel erroneously applied the public policy exception in the Arbitration Award — an event Triton vigorously argues did not occur, this would not support Nordell's position that the Ninth Circuit acted contrary to the *W.R. Grace* and *Misco* decisions. *See Seymour v. Blue Cross/Blue Shield,* 988 F.2d 1020 (10th Cir. 1993) (refusing to vacate award on public policy grounds because of arbitrator's error in interpreting the law); *Board of County Com'rs of Lawrence County, Ohio v. L. Robert Kimball and Associates,* 860 F.2d 683, 688 (6th Cir. 1988), *cert. denied,* 494 U.S. 1030, 110 S.Ct. 1480, 108 L.Ed.2d 617 (1990).[11]

Third, an enforcement of the Arbitration Award does not violate public policy. Typically, the public policy exception is addressed by courts when enforcement of the award itself compels one of the parties to take action which directly conflicts with public policy. *Revere Copper and Brass Inc. v. Overseas Private Inv. Corp.,* 628 F.2d 81, 83 (D.C. Cir. 1980), *cert. denied,* 446 U.S. 983, 100 S.Ct. 2964, 64 L.Ed.2d 839 (1980). *See, e.g., Delta Air Lines, Inc. v. Air Line Pilots Ass'n, Intern.,* 861 F.2d 665, 671 (11th Cir. 1988), *cert. denied,* 493 U.S. 871, 110 S.Ct. 201, 107 L.Ed.2d 154 (1989) (enforcement of award violated public policy because it required reinstatement of pilot who had piloted aircraft while drunk); *Iowa Elec. Light and Power Co. v. Local Union 204 of the Int'l Bhd. of Elec. Workers,* 834 F.2d 1424, 1428 (8th Cir. 1987)

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[11] Any argument by Nordell that the arbitrators acted in manifest disregard of the public policy exception also fails. *See O.R. Securities, Inc. v. Professional Planning Assocs.,* 857 F.2d 742, 747 (11th Cir. 1988) (to vacate an award on this ground, "there must be a showing in the record, other than the result obtained, that the arbitrators knew the law and expressly disregarded it"); *see also San Martine Compania De Navegacion, S.A. v. Saguenay Terminals Ltd.,* 293 F.2d 796, 801 (9th Cir. 1961); *Jenkins v. Prudential-Bache Sec., Inc.,* 847 F.2d 631, 634 (10th Cir. 1988).

(enforcement of award violated public policy because it required reinstatement of nuclear power plant machinist who had deliberately pulled fuse on containment area door in violation of NRC rules); *American Postal Workers Union AFL-CIO v. U.S. Postal Service,* 682 F.2d 1280, 1286 (9th Cir. 1982), *cert. denied,* 459 U.S. 1200, 103 S.Ct. 1183, 75 L.Ed.2d 431 (1983) (arbitration award will not be enforced if it forces a party to perform a manifestly illegal act).

The public policy exception is inapplicable here because the award does not compel either party to take action which conflicts with public policy. There is no manifestly illegal act which Nordell is forced to perform. Rather, the Arbitration Award requires a readjustment of contractual interests between the parties as well as monetary damages. This is relief which was expressly requested by Nordell. (Appendices 4-5.) Thus, Nordell's remaining authorities --neither of which involve arbitration -- are inapplicable. *See, e.g., Hurd v. Hodge,* 334 U.S. 24, 68 S.Ct. 847, 92 L.Ed. 1187 (1948) (enforcement of final judgment would violate federal and constitutional restriction against racial discrimination); *and McMullen v. Hoffman,* 174 U.S. 639, 19 S.Ct. 839, 43 L.Ed. 1117 (1899) (contract provisions required performance of illegal acts).

Moreover, in examining the enforcement of the terms of the Award itself, Nordell's arguments fail. This Court held in *Misco* that, once the public policy is identified, the party seeking to vacate the award must demonstrate a sufficient link between enforcement of the award and a violation of the policy. 484 U.S. at 44. Here, no such link exists. Enforcement of the Award will not--by any stretch of the imagination--perpetrate a fraud or cause an FCPA violation.

Nordell's argument completely misses the mark. It argues, at most, that *its allegations* of fraud--which the Arbitration Panel rejected--are sufficient to show that enforcement of the Award is

an endorsement of "fraud," even though such "fraud" was never proven. Unproven allegations of fraud are not sufficient to overturn an arbitration award based on supposed considerations of public policy. The Ninth Circuit reached the same conclusion, basing its decision in part on *Osceola County Rural Water System, Inc. v. Subsurfco, Inc.*, 914 F.2d 1072 (8th Cir. 1990). (Nordell Appendix A, APP-10-11.)

In *Subsurfco,* an arbitration was conducted between Osceola, the operator of a rural water system, and Subsurfco, a contractor. The contract between the parties provided that Subsurfco would construct a 680-mile system primarily by use of the "open trench method." After difficulties arose, the parties modified their agreement to permit Subsurfco to use the "plow-in" method. This procedure required the pipe sections to be glued rather than sealed with rubber gaskets. Osceola terminated the contract, and Subsurfco demanded arbitration. Osceola's primary complaint concerned excessive leakage in the system. The Arbitration Panel found that Subsurfco substantially completed the work under the contract and had performed in accordance with Osceola's design specifications.

Osceola brought suit to vacate the award because the award allegedly "violated public policy because the Arbitration Panel ignored the testimony of two of Subsurfco's former employees that they had been ordered . . . to falsify the results of pressure testing." The district court agreed and vacated the award.

The Court of Appeals overruled the district court, stating:

> The arbitrators heard testimony from some twenty witnesses over a six-week period, receiving in evidence several thousand documents. Each of the arbitrators had lengthy experience in the construction industry . . . [W]e conclude that the district court erred in holding that the award violated public policy because it in effect rewarded Subsurfco for falsifying the results of pressure testing. As the district court recognized, arbitrators are not required to elaborate on the reasoning in support of an award. There is nothing in the record to suggest that the arbitrators accepted as true the testimony of the former employees (both of whom were employed by Osceola at the time of their testimony before the arbitrators) regarding the falsification of test results. The arbitrators brought their collective experience to bear on the extensive testimony and voluminous documentary evidence received and then entered an award in accordance with their understanding of the meaning of the contract provisions. That was their prerogative and duty, and we see no justification for setting aside their award.

914 F.2d at 1075.

Similarly, here, the Arbitration Panel brought their collective experience to bear and rejected the claims of fraud raised time and time again by Nordell. There is nothing to suggest that the Arbitration Panel accepted as true any testimony elicited by Nordell regarding alleged falsification of the books and records of the ENIM Project. In fact, they rejected it. The Court's opinions in *W.R. Grace* and *Misco* are not in conflict with the Ninth Circuit's decision below.

**B. Neither the decision below nor the Arbitration Award nor the District Court's Final Judgment found that Triton committed violations of the Foreign Corrupt Practices Act; moreover, these issues were not properly preserved by Petitioner on appeal.**

Nordell alleges that Triton violated the Foreign Corrupt Practices Act, that the Arbitration Panel ignored such alleged violations, and that, as a result, the Award violates public policy. Nordell never argued alleged violations of the FCPA to the District Court or the Ninth Circuit as a reason to vacate the Award. To raise this issue for the first time before this Court is improper and should not be considered by the Court. *See Taylor v. Freeland & Kronz,* ___ U.S. ___, 112 S.Ct. 1644, 118 L.Ed.2d 280 (1992) (this Court would not consider argument raised for first time in opening brief on merits, which had not been raised or resolved in lower courts).

In the alternative, even if the Court considers the merits of this argument, the argument does not support granting a writ of certiorari. First, the Arbitration Panel did not make a factual finding that Triton committed a violation of the FCPA. To the contrary, the terms of the Award do not reflect any such violation. Second, it is not the reviewing court's function to decide independently whether the conduct of the prevailing party violated the FCPA, or any similar statute. *Misco,* 484 U.S. at 45. Third, even by Nordell's own arguments, it has failed to show that such a violation has occurred. Triton has not committed any acts which could be characterized as done in order to obtain or retain "business for or with, or directing any business to, any person" within the parameters of the statute at issue and the case law. *See* 15 U.S.C.A. § 78 dd-1(a)(1) (West Supp. 1993). Nordell's arguments that such unproven allegations preclude enforcement of the Award as against public policy, should be rejected.

**C. Neither the decision below nor the record supports the application of the unclean hands doctrine against Triton as an explicit, well-defined and dominant federal public policy exception to the enforcement of commercial arbitration awards.**

Nordell finally argues that the Ninth Circuit's Memorandum purportedly conflicts with the *Misco* decision because, allegedly, enforcement of the Award would violate the "unclean hands doctrine." Petition, p. 27. Nordell relies on California state law to support its arguments. This is insufficient as a matter of law to invoke this Court's jurisdiction. *See* Objection to Jurisdictional Statement.

Additionally and alternatively, the unclean hands doctrine does not conflict with the decision of the Ninth Circuit below.

Nordell first argues that the Arbitration Panel ignored the doctrine of unclean hands. Appellants rely on Section 3517 of the California Civil Code that states, "no one can take advantage of his own wrong." The Arbitration Panel did not find that Triton committed any "wrong." Moreover, the Arbitration Panel did not find that Triton "took advantage" of its "own wrong." Additionally, the record does not reflect that the Arbitration Panel recognized this maxim and chose to ignore it.

The loosely articulated unclean hands doctrine applies against a party in a civil judicial proceeding who is found, as a matter of fact, to have committed acts of fraud, unconscionability or bad faith towards the party against whom it has proceeded. *Precision Instrument Mfg. Co. v. Automotive Maintenance Machinery,* 324 U.S. 806, 814, 65 S.Ct. 993, 997, 89 L.Ed. 1381 (1945); *International Union, Allied Industrial Workers v. Local Union No. 589,* 693 F.2d 666, 672 (7th Cir. 1982). Nothing in the record before this Court shows that the Arbitration Panel found that Triton committed acts of fraud, unconscionability or bad faith

towards Nordell. There is no indication that the Panel recognized this maxim but chose to ignore it. The record reflects fact findings that Nordell committed "bad faith acts toward the party it has proceeded against"--Triton. If anyone is guilty of unclean hands, it is Nordell.

The California cases cited by Nordell do not support its argument. *See, e.g., Buck v. Dahlgren,* 100 Cal. Rptr. 462 (Cal. App. - 4th Dist. 1972) (non-arbitration case in which the court applied unclean hands to prelude recovery by party participating in usury transaction); *Richman v. Bank of Perris,* 282 P. 801 (Cal. App. - 4th Dist. 1929) (non-arbitration case in which party was barred from equitable relief where he "stepped into shoes" of debtor who "robbed the bank" and committed a criminal act). Moreover, these cases address California state doctrines, not federal laws or policy. Triton has found no case in which a federal court has vacated an arbitration award based on the unclean hands doctrine under the public policy exception. Triton suggests that there are none and for good reason. The "unclean hands doctrine" does not rise to the level of explicit, well-defined and dominant federal public policy sufficient to satisfy the *Misco* test.

## CONCLUSION

For the reasons set forth herein, Triton requests that the Court deny Nordell's Petition for Writ of Certiorari. Nordell has shown this Court no valid basis to exercise its jurisdiction to hear this case. The decisions and policy concerns expressed by this Court in *Misco* and *W.R. Grace* are not in conflict with the opinion below. The factual findings by the Arbitration Panel do not support Nordell's requested relief. It would be contrary to the well-established decisions of this Court to make findings of fact which are contrary to those found by the proper finder of fact in this case: the Arbitration Panel.

DATED: January 19, 1994.

Respectfully submitted,

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